

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

VITA 4 LIFE, INC.,

Plaintiff,

v.

CYNOSURE, INC.,

Defendant.

Case No. 17-cv-11435 (Consol.)

Hon. Denise J. Casper

PLASTIC SURGERY ASSOCIATES, S.C., *et al.*,

Plaintiffs,

v.

CYNOSURE, INC.,

Defendant.

Case No. 17-cv-11850 (Consol.)

Hon. Denise J. Casper

**DEFENDANT CYNOSURE, LLC’S MOTION FOR SUMMARY JUDGMENT**

**ORAL ARGUMENT REQUESTED**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, Defendant, Cynosure, LLC (f/k/a Cynosure, Inc.) (“Cynosure”), hereby moves for summary judgment on each of the causes of action alleged in the Complaint. The grounds for this Motion are that (1) Plaintiffs’ claims under Mass. Gen. L. ch. 93A § 11 arise from conduct that did not occur “substantially and primarily” in Massachusetts, (2) the contracts Plaintiffs signed to purchase the SculpSure devices expressly disclaim the warranty of merchantability, and (3) the availability of adequate remedies at law precludes the equitable remedy of unjust enrichment. The grounds for this Motion are set forth more fully in the accompanying Memorandum of Law, the LR 56.1 Statement of Undisputed Facts, and the accompanying declarations and exhibits. In accordance

with L.R. 7.1(a)(2), Defendant's counsel met and conferred with Plaintiff's counsel prior to filing this Motion, but was unable to resolve or narrow the dispute.

Dated: February 19, 2019

Respectfully submitted,

**CLEMENTS & PINEAULT LLP**

By: /s/ Michael J. Pineault  
Michael J. Pineault  
24 Federal Street, 3rd Floor  
Boston, MA 02110  
T: +1 857.445.0135  
F: +1 857.366.5404  
[mpineault@clementspineault.com](mailto:mpineault@clementspineault.com)

**ARNOLD & PORTER KAYE SCHOLER LLP**

Anand Agneshwar (*pro hac vice*)  
Lori B. Leskin (*pro hac vice*)  
250 West 55th Street  
New York, NY 10019-9170  
T: +1 212.836.8000  
F: +1 212.836.8639  
[Anand.Agneshwar@arnoldporter.com](mailto:Anand.Agneshwar@arnoldporter.com)  
[Lori.Leskin@arnoldporter.com](mailto:Lori.Leskin@arnoldporter.com)

Daniel S. Pariser (*pro hac vice*)  
Jocelyn Wiesner (*pro hac vice*)  
601 Massachusetts Ave., NW  
Washington, DC 20001-3743  
T: +1 202.942.5000  
F: +1 202.942.5999  
[Daniel.Pariser@arnoldporter.com](mailto:Daniel.Pariser@arnoldporter.com)  
[Jocelyn.Wiesner@arnoldporter.com](mailto:Jocelyn.Wiesner@arnoldporter.com)

George Langendorf (*pro hac vice*)  
Three Embarcadero Center  
San Francisco, CA 94111-4024  
T: +1 415.471.3191  
F: +1 415.471.3400  
[George.Langendorf@arnoldporter.com](mailto:George.Langendorf@arnoldporter.com)

*Attorneys for Defendant Cynosure, LLC*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 19<sup>th</sup> day of February, 2019, the foregoing Motion for Summary Judgement was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Michael J. Pineault

Michael J. Pineault